

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	4:07CR3014
v.)	
)	
OTILIA ORTIZ-CAHUEQUE,)	
)	MEMORANDUM AND ORDER
Defendant.)	
)	

The government has filed a motion requesting that the trial in this matter be reset to March 29, 2007 or earlier to comply with the time restrictions of the Speedy Trial Act, 18 U.S.C. 3161, *et seq.* However, the premise upon which the motion is based--that the 70th day following the date of the defendant's initial appearance is March 30, 2007--is incorrect.

Defendant's initial appearance was pursuant to a complaint on December 21, 2006. A preliminary examination was held December 27, and probable cause was found. Thus, defendant was held to answer for the matter to be presented to the grand jury. The grand jury returned an indictment on January 18, 2007, and the defendant was arraigned on the indictment on January 26, 2007. 18 U.S.C. 3161(c)(1) requires "In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." *Id.* "The Speedy Trial Act mandates that 'a federal criminal defendant must be brought to trial within seventy days of the filing of his

indictment or his arraignment, whichever is later.'" U.S. v. Gamboa, 439 F.3d 796, 804 (8th Cir. 2006, quoting United States v. Yerkes, 345 F.3d 558, 561 (8th Cir. 2003). The 70th day following January 26, 2007 is April 6, 2007. The trial is set to commence on April 2, 2007, within the 70-day limit. Even if the trial date were not within the seventy days, the government's motion filed on March 9, 2007 tolled the running of the limitations period imposed by the Speedy Trial Act. See, U.S. v. McKay, 431 F.3d 1085 (8th Cir. 2005) ("[T]he Speedy Trial Act excludes periods of delay that are due to the filing of pretrial motions by either party, 18 U.S.C. § 3161(h)(1)(F).").

IT THEREFORE HEREBY IS ORDERED,

The motion, filing 23, is denied.

DATED this 15th day of March, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge